

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

DREW TRACY, DUANE SCHUMAN,  
RICK STEELE, CHRIS LINES, DANIEL  
KEVIN GRIFFEE, RICHARD HUFFMAN,  
LEE HAZELTON and SCOTT WILLIS,  
individually,

Plaintiffs,

vs.

CITY OF VANCOUVER, a municipality,

Defendant.

No. 3:17-cv-05414-RBL

DEFENDANT CITY OF  
VANCOUVER'S ANSWER AND  
AFFIRMATIVE DEFENSES IN  
RESPONSE TO [DKT. 18] PLAINTIFFS'  
FIRST AMENDED COMPLAINT

**JURY DEMAND**

Defendant CITY OF VANCOUVER hereby amends its previously filed answer to the allegations contained in Plaintiffs' First Amended Complaint (Dkt. 18) as follows. In response to the headings, "NATURE OF THE ACTION," "JURISDICTION AND VENUE," "PARTIES," "GENERAL ALLEGATIONS," and "FIRST CLAIM FOR RELIEF (Unpaid overtime wages – 29 U.S.C. §§ 207 *et seq*)," to the extent any response is required, Defendant City of Vancouver denies that Plaintiffs are entitled to any relief. Unless otherwise specified herein, the paragraph numbers contained in this pleading correspond to the paragraph numbers contained in Plaintiffs' complaint.

1           1.       This paragraph merely characterizes Plaintiffs' lawsuit and requires no response.  
2 To the extent any response is required, Defendant City of Vancouver denies that Plaintiffs are  
3 entitled to any relief.

4           2.       Jurisdiction is admitted.

5           3.       Defendant City of Vancouver admits venue.

6           4.       The first sentence of paragraph 4 is admitted. The second sentence of paragraph  
7 4 merely characterizes Plaintiffs' lawsuit and requires no response. To the extent any response  
8 is required, Defendant City of Vancouver denies that Plaintiffs are entitled to any relief.

9           5.       Admitted the Defendant City of Vancouver is a municipality located in  
10 Washington State. The remainder of this paragraph calls for a conclusion of law which is  
11 referred to the Court and is therefore denied.

12          6.       Admitted.

13          7.       Admitted that at times Plaintiffs worked in excess of 40 hours per week during  
14 the three years preceding the filing of the complaint. The word "routinely" is denied. To the  
15 extent this paragraph alleges anything further or anything different, Defendant City of  
16 Vancouver denies the same.

17          8.       Admitted that per the mutually negotiated collective bargaining agreement,  
18 "Shift overtime will be paid at time-and-one-quarter," and that the City paid Plaintiffs in  
19 accordance with the mutually negotiated collective bargaining agreement. Denied that any  
20 other overtime was paid at time-and-one-quarter. To the extent this paragraph alleges anything  
21 further or anything different, Defendant City of Vancouver denies the same.

22          9.       Admitted that Section 7.3 of the applicable collective bargaining agreement  
23 provides:

24               By mutual agreement of the employer and employee, compensating time off at  
25 the applicable premium rate may be arranged in lieu of overtime or callback pay.

1 Compensating time off may accumulate not to exceed One hundred and twenty  
2 (120) hours. Use of compensating time off may be scheduled as mutually agreed  
3 by the employer and employee and will be taken in 12 hour blocks (for 24-hour  
personnel

4 Admitted that the City of Vancouver at all times complied with this and all other sections of the  
5 mutually negotiated collective bargaining agreement. To the extent this paragraph alleges  
6 anything further or anything different, Defendant City of Vancouver denies the same.

7 10. Denied.

8 11. Denied.

9 12. Denied.

10 13. Denied.

11 14. Denied.

12 15. Denied.

13 16. Denied.

14 17. Defendant City of Vancouver incorporates by reference the admissions, denials,  
15 responses, and averments made in response to paragraph 1-16.

16 18. Denied.

17 19. Denied.

18 20. Denied.

19 21. Denied.

20 22. Denied.

21 23. Denied.

22 24. Denied.

23 25. Denied.

24 As to the paragraph on page 5 of Plaintiffs' Complaint beginning with the word  
25 "WHEREFORE," and each and every paragraph and subparagraph thereunder, Defendant City

1 of Vancouver denies that Plaintiffs are entitled to any relief. As to any allegation to which  
 2 Defendant City of Vancouver has not yet responded, such allegations are specifically denied.

### 3 **AFFIRMATIVE DEFENSES**

4 Having fully answered Plaintiffs' Amended Complaint, and without waiving any  
 5 admissions, denials, or responses previously set forth, Defendant City of Vancouver  
 6 affirmatively alleges as follows:

7 1. Plaintiffs are exempt from FLSA's overtime provisions pursuant to 29 U.S.C.  
 8 § 213(a)(1), as they are employees employed in a bona fide executive capacity. The  
 9 Department of Labor has interpreted this statute to hold that fire battalion chiefs are exempt  
 10 from overtime provisions of FLSA, and that interpretation is entitled to judicial deference.

11 2. In the alternative, Plaintiff Tracy is exempt from FLSA's overtime provisions  
 12 pursuant to 29 U.S.C. § 213(a)(1) during his time as Interim Deputy Fire Chief and Interim  
 13 Division Chief of Training, as those positions satisfy the Department of Labor's tests for  
 14 executives and administrative employees.

15 3. In the alternative, Plaintiff Huffman is exempt from FLSA's overtime provisions  
 16 pursuant to 29 U.S.C. § 213(a)(1) during his time as Interim Division Chief of Training, as that  
 17 position satisfies the Department of Labor's tests for executives and administrative employees.

18 4. As the City's actions are not willful under the FLSA, Plaintiffs are time barred  
 19 from seeking damages for acts occurring more than two years prior to the filing of their  
 20 complaint. To the extent the Court finds any actions to be willful, Plaintiffs are time barred  
 21 from seeking damages for acts occurring more than three years prior to the filing of their  
 22 complaint.

23 5. Through collective bargaining, the City established a 207(k) work period and  
 24 therefore is entitled to the 207(k) exemption.  
 25

WHEREFORE, having fully answered Plaintiffs' Amended Complaint and asserted its affirmative defenses, Defendant City of Vancouver prays for judgment as follows:

1. That Plaintiffs take nothing by their complaint and this action be dismissed with prejudice.
2. That Defendant City of Vancouver be awarded its costs and a reasonable attorneys fees to the extent allowable by law.
3. Any other relief the court deems just and equitable.

CITY ATTORNEY'S OFFICE  
VANCOUVER, WASHINGTON

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date provided below, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individual(s):

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DATED on May 7, 2018.

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VANCOUVER, WASHINGTON

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